

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
Assigned on Briefs July 21, 2015

**JOSHUA DUNN v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Bradley County  
No. 14-CR-201 Andrew M. Freiberg, Judge**

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**No. E2014-02425-CCA-R3-PC – Filed August 10, 2015**

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Joshua Dunn (“the Petitioner”) appeals the post-conviction court’s denial of his petition for DNA testing pursuant to the Post-Conviction DNA Analysis Act of 2001. The post-conviction court summarily dismissed the petition. Upon review, we affirm the judgment of the post-conviction court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

ROBERT L. HOLLOWAY, JR., J., delivered the opinion of the Court, in which CAMILLE R. MCMULLEN and ROGER A. PAGE, JJ., joined.

Joshua Dunn, pro se, Wartburg, Tennessee.

Herbert H. Slatery III, Attorney General and Reporter; Lacy Wilber, Senior Counsel; Stephen D. Crump, District Attorney General; and Joseph Y. McCain, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

**Factual and Procedural Background**

In 2008, the Petitioner pleaded guilty to especially aggravated robbery, especially aggravated kidnapping, conspiracy to commit aggravated robbery, and arson and received an effective sentence of fifteen years at 100%. Joshua Dunn v. State, No. E2010-00600-CCA-R3-PC, 2011 WL 51735, at \*1 (Tenn. Crim. App. Jan. 7, 2011). He subsequently filed a motion to withdraw his guilty plea, which was denied by the trial court. Id. The

Petitioner then filed two petitions for post-conviction relief, challenging his convictions for especially aggravated robbery, especially aggravated kidnapping, and conspiracy to commit aggravated robbery. *Id.* at \*2. The post-conviction court denied relief, and this court affirmed the denial on appeal. *Id.* at \*2, \*5.

In 2014, the Petitioner filed a pro se Petition for Post-Conviction Relief Requesting DNA Analysis Pursuant to § 40-30-303 (“Petition”). The Petitioner claimed that “[e]vidence of DNA just has been found” and that the “DNA evidence will prove [the Petitioner] is [innocent] of [especially aggravated] robbery and [especially aggravated] kidnapping.” Additionally, the Petitioner referenced results of a DNA analysis which showed a DNA match to Joshua Snyder.<sup>1</sup> A copy of the corresponding report, which was issued by the Tennessee Bureau of Investigation (“TBI”) in February 2009, was attached as an exhibit to the Petition. The Petitioner did not identify any additional DNA evidence that was not included in the TBI’s analysis.

In its response, the State noted that the DNA evidence to which the Petitioner referred was destroyed on October 30, 2013, as part of an evidence burn authorized by the Criminal Court of Bradley County. Further, the State argued that the DNA analysis was performed on the Petitioner’s co-defendant because Mr. Snyder had received a gunshot wound during the offense and left blood at the scene. There was no reason to test the Petitioner’s DNA because he was not wounded during the offense. Additionally, the State noted that the Petitioner had confessed to the charged offenses during a police interview.

The post-conviction court dismissed the Petitioner’s claim, finding the Petitioner failed to present a colorable claim for relief to establish his eligibility for DNA testing under the Post-Conviction DNA Analysis Act of 2001. This timely appeal followed.

### **Analysis**

On appeal, the Petitioner asks this court to find that the State acted in bad faith when it destroyed the DNA evidence during the pendency of the Petitioner’s federal habeas corpus proceedings. Additionally, the Petitioner argues that the trial court erred in summarily dismissing the Petition.

Under the Post-Conviction DNA Analysis Act of 2001, a person may, at any time, file a petition “requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence.” Tenn. Code Ann. § 40-30-303 (2014). Upon the

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<sup>1</sup> As stated in the trial court’s order, Joshua Snyder was the Petitioner’s co-defendant.

petitioner's request, the trial court shall order DNA analysis if the following four requirements are met:

- (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
- (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
- (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
- (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Tenn. Code Ann. § 40-30-304 (2014).

In his Petition, the Petitioner simply stated, "Evidence of DNA just has been found," but he failed to identify the source of the DNA evidence. Further, the Petitioner referred to evidence that had been collected prior to his plea and submitted to the TBI. The TBI performed the requested testing and found that none of the DNA from the submitted evidence matched the Petitioner. The Petitioner did not request any further testing or new analysis of the evidence, and he failed to state how any additional testing "could resolve an issue not resolved by the previous analysis." The TBI report, attached to the Petition, already established that no DNA evidence linked the Petitioner to the crime scene, and the Petitioner did not state how further testing would have yielded a more favorable result. Additionally, the Petitioner failed to identify any additional evidence that was not included in the TBI's DNA analysis. Moreover, the Petitioner failed to show that the evidence to be tested still exists. As evidenced by the State's response, the DNA evidence was destroyed in October 2013 pursuant to a court order, prior to the filing of the instant Petition. Accordingly, the Petitioner failed to present a colorable claim for relief, and the trial court properly dismissed the Petition.

Because the Petition failed to state a colorable claim for relief, we need not address the Petitioner's claim that the State destroyed evidence relating to his case in bad faith.

**Conclusion**

For the aforementioned reasons, the judgment of the post-conviction court is affirmed.

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ROBERT L. HOLLOWAY, JR., JUDGE